

Oroville Facilities Relicensing Process

Collaborative Check-up

The Department of Water Resources recognizes the importance of identifying and resolving those process concerns that have the potential to impede the progress of the ALP in meeting its goals. Towards that end, DWR agreed to agendize discussion over two Plenary meeting of concerns expressed by several Participants. This discussion allows the collaborative to collectively determine whether any changes are required in the Process Protocols.

Does the collaborative process need a different definition of consensus?

Concerns: Some Participants have raised a number of concerns about the definition of consensus. They have questioned which Participants should have a say in reaching consensus. Some are concerned about whether consultants to Participants, as compared to representatives of organizational Participants, should have any say in reaching consensus. A related issue is whether consultants to Participants should be able to sit at the main table. Another issue is whether the negative polling approach in the Process Protocols is an appropriate way to reach consensus. These Participants have expressed a concern about DWR's bestowing upon itself overriding authority relative to any particular issue upon which consensus is sought. Yet another issue is whether a single individual should represent multiple interests in taking part in the collaborative process. And also there is a concern that multiple participants from one organization imply that they'll have a greater "voice" in decision making.

Responses: At the February Plenary meeting a proposal was made to add language to the Process Protocols that would state: "Multiple representatives of a given Participant constitute one Participant for the purposes of this Protocol." While several Plenary Group members were not prepared to indicate a position at that time, the clarification of who is a Participant is an

important concept. The proposed clarification seemed to work for many Participants and reflects DWR staff view.

There seems to be support for the concept that consultants should not be counted as Participants for reaching consensus, unless the consultant also serves as the formal sole representative of a Participant (i.e. in lieu of the Participant). There seemed to be recognition that many Participants could really only effectively participate in the collaborative process through representatives. Every Participant should be able to sit at the main table. However, some Participants seem to choose to sit away from the main table and should not necessarily be forced to sit there if they choose not to. Some consultants actively participate in the collaborative process representing the interests of both their clients as well as the collaborative process. The main table should be able to accommodate Participants and those consultants who are active in the collaborative discussions.

The Process Protocols adopt negative polling as the primary technique in determining consensus. The benefit of this approach is that it does not force Participants to affirmatively indicate approval, but provides the opportunity for expressing concerns or opposition to any proposed action. Requiring Participants to take affirmative positions can be very difficult, particularly for representatives of organizational clients. It is typically harder for a representative to say: "I support that concept," rather than "I think my client can live with it." DWR recommends that we continue to use the negative polling, "I can live with it" approach up until settlement.

However, when it comes to the settlement agreement, each Participant will be asked whether they support the proposed settlement. They will be asked to sign the settlement agreement; which will mean for most organizational Participants that their respective boards will need to adopt affirmative resolutions of support for the final settlement agreement. DWR has consistently said that it

will sign a settlement agreement only if it contains acceptable provisions and obligations. We anticipate that each Participant will do the same – sign the settlement agreement if it contains acceptable resource actions, provisions and obligations. We understand that some mandatory conditioning agencies may not be able to formally sign, but we look forward to their participation throughout in hopes that their subsequent formal proceedings will reflect the negotiated settlement, acknowledging that it will also include its independent agency review. Even in the development of the settlement agreement, we anticipate continuing to use the negative polling technique when considering individual resource actions. It is anticipated, however, that when each Participant is evaluating the full package they will then need to pro-actively affirm support by signing the settlement.

In addition, federal and State agencies that have mandatory conditioning authority may need to be treated uniquely relative to the concept of “overriding opinion;” which may preclude consensus on a particular issue that is within the jurisdiction of that mandatory conditioning authority. One role of the collaborative process is to attempt to reconcile such differing views in reaching an overarching settlement. If an agency with mandatory conditioning authority has an outstanding issue which remains unresolved, there needs to be recognition and appropriate documentation of the issue within the collaborative. DWR, as the applicant, recognizes the potential adverse impact on its relicensing efforts if a mandatory conditioning authority’s outstanding issues are not effectively addressed while also recognizing these issues must be scientifically and legally supportable.

How can the collaborative process better meet the reasonable expectations and needs of the Participants?

Concerns: One concern is whether local Participants believe their input is meaningful and whether DWR and the collaborative process are addressing their issues. There are concerns about the extraordinary demands for Participants, especially those who are not paid for their involvement. For some Participants, there seems to be too many meetings. For others, there is a perceived need for more meetings to work through the issues, especially related to proposed resource actions (proposed protection, mitigation and enhancement measures (PM&E's)). While the process seems to be meeting the needs of many of the Participants, there are many uncertainties about whether the needs and issues of the Participants will be met. There is a concern that many of the issues which have been raised by local Participants have been either lost in the process or ignored. It has been suggested that funding should be made available for Participants who have a proven track record of committed participation in the collaborative process.

Finally, some have raised concerns about the time and location of the meetings. Some prefer days, some evenings. Also, some prefer Sacramento, others Oroville.

Responses: From the onset of the licensing effort, the collaborative process has actively sought out the issues and concerns of all interested stakeholders. From that early identification of interests, the collaborative process developed issue sheets which articulated those interests along with resource goals. All Participants were invited to contribute resource goals. The issue sheets and related resource goals served as the foundation for the development of study plans, which were adopted by the work groups and the Plenary Group. We are now at the point in the process where Participants have been invited to identify proposed resource actions (potential PM&E's). The overall collaborative

approach was meant to be a logical progression, which hopefully leads to a settlement agreement consistent with the interests of a broad group of Participants.

The time demand of the process is a concern for all Participants, including DWR. All Participants need to focus on the important issues and to let go of less important ones. The overall collaborative process appears to be at the stage where energy needs to be focused at the work group level, where the proposed resource actions are being compiled, reviewed, analyzed, assessed and evaluated by the Participants with the greatest interest and expertise in those resource areas.

Another aspect of responding to the time demand of the process is to focus on coalition building. The Process Protocols encourage Participants with similar interests to form coalitions and to utilize spokespersons to represent their interests (p. 5). For example, the Lake Oroville Joint Powers Authority is actively compiling input from the local community regarding recreation interests and identifying proposed resources actions (potential PM&E's) for consideration by the collaborative (Recreation and Socioeconomic Work Group, in the first instance). DWR has financially supported the LOJPA's participation through reimbursing it for the services of the Dangermond Group. In addition, DWR is providing financial support to the Tribal Legacy Coordinators, consisting of representatives of Mooretown, Enterprise and Berry Creek Rancherias.

DWR suggests that we all do the following:

- Focus on resource issues of most importance;
- Seek out coalitions of like interests so that representatives can cover issues of concern for several Participants where possible;
- Help the process focus on substantive issues at hand (study results, determining project impacts/responsibilities, identifying and developing resource actions to address project impacts/responsibilities);

- Develop proposals for collaborative work group and Plenary review to increase the efficiency and quality of the process (similar to what was done on the study plans);
- Consider alternating the times and locations of the meetings, and providing phone access to all meetings to accommodate different stakeholders' needs.

Any and all additional suggestions to improve the process are welcomed.

How can the collaborative process provide more clarity and become more transparent?

Concerns: There is a concern among some that decisions are being made outside of the Plenary Group. Much authority is being vested in task forces and work groups. The process appears to some as a moving target because of the demands of active participation. There is a perception among some Participants that the facilitator is biased in favor of DWR and State Water Contractors. Some have suggested the need for oversight or peer review over the relicensing studies.

Responses: First, DWR wants to reaffirm that decisions are being made within the collaborative process, as originally committed to in establishing this process. It is important, however, to point out that this collaborative process is in support of DWR in its preparation of its license application. DWR will submit its license application on time and it will include a record of the collaborative consultation process, the issues identified and addressed, and proposed resource actions. If a settlement is achieved, this will be included as well. Within the collaborative process the work is assigned to either the work groups or the plenary. Work groups will be very active in the near-term reviewing study results

and identifying and reviewing proposed resource actions. The Plenary will be more active later as it prepares for settlement negotiations early next year.

The existing Process Protocols are clear: “The facilitator has a primary role of promoting the success of the collaborative process . . . the facilitator works for ‘the process’ and no particular agency or interest group.” (p. 14) DWR strongly believes in the need for an independent facilitator, who must act in a fair and unbiased manner. However, there have been times that the facilitator has appeared to actively defend DWR. DWR staff need to be more mindful about the appropriate role of the facilitator. DWR staff need to be more proactively engaged in speaking up and sharing DWR concerns and issues. DWR agrees it has the responsibility to remind the facilitators of their proper role and the need to conduct meetings in a fair and unbiased manner. However, it is important to remember that the recognized roles of the facilitator include the need to keep the overall collaborative effort on task, to remind Participants of the license schedule, and to uphold the guidelines established in the communications protocols.

DWR encourages all Participants to assist in focusing on needed tasks, sustaining a fair process and keeping the process moving forward. DWR wants to affirm that there are no “side deals” between DWR and the State Water Contractors or anyone else. However, as is provided in the Process Protocols, caucuses of like interests are encouraged to meet and discuss issues and determine needs. Such informal communications are permitted and encouraged in order for Participants to share their perspectives on issues and identify areas of agreement and disagreement on issues. DWR anticipates having discussions with many of the Participants regarding issues and needs. We expect that if there are substantive discussions held among some Participants that the outcomes would be brought forward into the collaborative process through the work groups and the plenary.

The work groups have been receiving preliminary study results. The collaborative process itself serves as a peer review function. For each resource area, federal, State and local government representatives and other Participants are involved in reviewing study results, proposing resources actions (potential PM&E's) and assisting in assessments of those proposals at the work group level. At this time, it does not seem appropriate to add more layers of studies or peer review onto the process. As Participants continue the process of identifying and assessing proposed resource actions (potential PM&E's), there is an expectation that good ideas with broad bases of support and which squarely meet resource needs will surface. If there is a future need for additional analysis or dispute resolution, DWR is prepared to address those needs as they arise.

How can the schedule and workload be adjusted to assist in sustained participation by all stakeholders?

Concerns: One concern is about the time demands on Participants to actively participate and represent their individual or organizational interests. Some Participants wonder whether they can sustain meaningful participation in light of time constraints and needs. Specific concerns have been raised about the tentative schedule for proposed PM&E identification, review, and assessment.

Responses: While DWR is sympathetic to these concerns, each Participant must evaluate their level of interest and ultimate goal or responsibility with respect to Oroville Facilities relicensing and participate accordingly. Again, Participants should consider forming coalitions with others that share their interests and resource goals. DWR has earlier proposed that the Process Task Force spend time now on setting the stage and preparing for settlement discussions. For example, the LOJPA appears prepared to represent local Participants with similar interests. DWR will be mindful of the time constraints of Participants and will take reasonable steps to reduce unnecessary meetings as

well as strive to make the meetings we do have as productive as possible. Whatever else the Participants may agree to, the application date of January 2005 cannot be changed by DWR or any other Participant.

DWR suggests that meetings be held only when there is content to address, i.e., review study results, discuss potential resource actions, and discuss cross-resource issues. If there is not this content to be addressed at a work group or plenary, then meetings should not be held. This has been the established work group procedure and we suggest it should also be the Plenary Group procedure.